Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993	)	WT Docket No. 10-133
	)	
Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless including Commercial Mobile Services	)	

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (RCA)[1] hereby submits these Comments in response to the Federal Communications Commission's (FCC or Commission) Public Notice[2] seeking input and data on mobile wireless competition for the Commission's Fifteenth Annual Report on the State of Competition in Mobile Wireless, including Commercial Mobile Radio Services. RCA is pleased with the Commission's analysis and findings concerning the state of competition in the mobile wireless market and the nation's largest wireless carriers' market power in its recently released Fourteenth Annual Report on the State of Competition in Mobile Wireless, including Commercial Mobile Radio Services (*Fourteenth Report*).[3] RCA hopes the FCC will help to prevent some of the larger carriers' anti-competitive tactics that harm rural and regional carriers. In its *Fourteenth Report* released in May 2010, the FCC expressed concern about growing consolidation in the wireless industry. For the first time since 2003, the FCC failed to conclude the wireless industry is effectively competitive. RCA

[1] RCA is an association representing the interests of nearly 90 regional and rural wireless licensees providing commercial services to subscribers throughout the Nation and licensed to serve more than 80% of the country. Most of RCA's members serve fewer than 500,000 customers.

[2] *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 10-133, *Public Notice*, DA 10-1234, (June 30, 2010) (*Notice*).

[3] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81 (May 20, 2010) (*Fourteenth Report*).

shares the FCC's concerns about the growing dominance of the larger carriers, as rural and regional carriers struggle to compete. There are five ways the FCC can further stimulate competition. The Commission should: (1) eliminate handset exclusivity; (2) mandate automatic roaming; (3) ensure interoperability throughout the 700 MHz spectrum band thus giving consumers more choices in every market; (4) quickly auction more spectrum in smaller geographic licensed areas; and, (5) provide funding to both wireline and wireless technology in rural America.

I. Eliminate Handset Exclusivity for the Competitive Benefit of Rural Consumers

Handset exclusivity presents one of the most challenging hurdles to competition in rural America. In its *Notice*, the FCC asks about the role of handsets and devices in competition among mobile wireless service providers and whether this role varies depending on where a subscriber lives.[4] Handset exclusivity exacerbates the competitive struggle for rural and regional carries in the wireless industry. Data from 3Q last year shows that the larger carriers, in cooperation with handset manufacturers, locked up in exclusive deals 46 of the 50 most popular handsets.[5] This type of exclusivity harms competition, especially in smaller rural and regional markets. Although rural and regional carriers can compete against the larger carriers on price, service quality, customer service, among others, smaller carriers' lack of access to the most popular and innovative handsets undercuts that ability. Many consumers select their wireless carrier based upon the handsets that carrier provides. One study reported that more than 50% of consumers treat handset selection as a major factor in carrier selection, and that 24% of consumers select their carrier exclusively on the basis of the carrier's handset portfolio.[6] A carrier that can monopolize access to the latest handsets has a competitive advantage. RCA carrier members that do not have the purchasing power to command

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[4] *Notice* at 8.

[5] *See* Avian Securities, LLC, *Wireless Handsets: Monthly U.S. Retail Store Survey* (September 1, 2009). Avian Securities' proprietary survey is based on responses from 100 service representatives at retail stores of the four major U.S. wireless carriers.

[6] Rita Chang, *Proof That Handset Brands Help Sell Wireless Plans*, RCR WIRELESS NEWS, Oct. 28, 2008 ("Chang"), *available at* http://www.rcrwireless.com/article/20081028/WIRELESS/810289995/1081/proof-that-handset-brands-help-sell-wireless-plans#.

exclusive deals with handset manufacturers face a competitive disadvantage in their efforts to gain new customers and retain existing customers.

Even Chairman Genachowski acknowledged that handset exclusivity curbs consumer freedom, promising Senate Commerce Committee Member John Kerry the FCC would promote competition and consumer choice by investigating exclusive handset arrangements' effect on competition.[7] In a recent *ex parte* meeting with FCC staff, RCA representatives described their continuing efforts to reach an industry consensus on exclusivity arrangements.[8] Since that meeting, RCA met with the large wireless carriers regarding handset exclusivity, but these carriers have not committed to opening the handset market for all RCA members. While the large carriers delay FCC action on RCA's requests, they deny rural consumers access to the latest technologies.

It has been more than two years since RCA requested that the FCC initiate a rulemaking to investigate the anti-competitive effects of exclusivity arrangements.[9] In order to promote competition and increase consumer choice, RCA urges the FCC to take immediate, pro-consumer action to end handset exclusivity.[10] Absent voluntary carrier adoption, RCA encourages the FCC to move forward with a regulatory solution. RCA members have strived over the years to broaden their coverage in rural America, and yet, their customers are forced to make a decision of better coverage or the latest and greatest handset. Rural customers, like their urban counterparts, should have access to the best handsets in addition to superior coverage.

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[7] Matthew Lasar, "Genachowski: FCC Will Probe Exclusive Handset Deals," ARS TECHNICA, June 21, 2009, *available at* http://arstechnica.com/tech-policy/news/2009/06/genachowski-tells-kerry-hell-probe-wireless-handsets-and-lots-more.ars.

[8] *See* letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary of the Federal Communications Commission, filed in RM-11497 (July 14, 2010).

[9] *See* Petition for Rulemaking Regarding Exclusivity Arrangements between Commercial Wireless Carriers and Handset Manufactures, Rural Cellular Association, RM-11497 (May 20, 2008).

[10] *See* letter from Rebecca Murphy Thompson, General Counsel for Rural Cellular Association, to Marlene H. Dortch, Secretary of the Federal Communications Commission, filed in WC Docket No. 05-337; CC Docket No. 96-45; WT Docket No. 05-265; WT Docket No. 09-66; and RM-11592 (June 17, 2010).

II. Data Roaming Will Increase Investment, Competition in Rural America

Data roaming is the fundamental building block for bringing ubiquitous broadband to rural America. Data roaming will enhance consumer and public safety access to advanced broadband services, promote competition, and increase rural and small regional carrier customer satisfaction through the provision of advanced data services while traveling or working outside their home service areas. In its *Notice*, the FCC asks to what extent wireless carriers offer coverage only in certain parts of rural areas, such as near major roads, and whether the FCC could improve mobile wireless service competition in rural areas.[11] In fact, the FCC should impose a data roaming mandate to foster a robust competitive environment in the wireless marketplace. In many rural and regional areas, the larger carriers hold licenses for expansive territories but chose only to serve interstates and major roadways. On the other hand, RCA carrier members are constructing advanced mobile wireless networks to serve the consumers throughout these small communities.

Data services like text messaging and email have rapidly become an indispensable aspect of wireless services.[12] The growing importance of wireless data services for consumers and public safety underscores the importance of data roaming, which has obvious benefits for any wireless subscriber who travels outside his or her home service area. For example, the Broadband Plan explained that data roaming would enable customers to obtain access to email, the Internet and other mobile broadband services outside the geographic regions served by their providers.[13] Additionally, a data roaming mandate would advance location-based services and implementation of E911 services throughout the United States. The FCC recognizes small rural providers serve customers that may be more likely to roam in areas outside their providers' network footprints.

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[11] *Notice* at 19.

[12] The FCC has already mandated data roaming for text messaging and voice. *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Dock-et No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007). RCA is optimistic that the FCC is committed to moving forward expeditiously to resolve data roaming issues.

[13] Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 49 (Mar. 16, 2010) ("Broadband Plan").

The Commission also asks in its *Notice* whether there are barriers to entry in the mobile wireless services industry and, if so, what the effects are of these and other types of barriers.[14] A data roaming mandate will encourage and enable investment in advanced broadband infrastructure throughout rural America, thereby removing barriers to entry. By facilitating investment in rural and small regional markets, a data roaming requirement would encourage more efficient and intensive use of spectrum in rural areas and new deployment of advanced services to all Americans by removing barriers to infrastructure investment and competition.[15]

As RCA noted above, market concentration is eroding competition in the wireless industry. In its recent *Fourteenth Report*, the FCC found that over the past five years, concentration has increased in the provision of mobile wireless services.[16] The FCC stated that AT&T and Verizon Wireless have a combined 60% share of both subscribers and revenue, which continues to grow. The FCC estimated that concentration has increased 32% since 2003 and 6.5% in 2008.[17] Market consolidation has a perilous impact on rural carriers' ability to effectively and reasonably negotiate a roaming agreement. Increased concentration limits the number of potential roaming partners, and the larger carriers can act at will to block rural and small regional carriers from obtaining data roaming arrangements with reasonable terms and conditions. Larger carriers often propose disproportionate roaming rates, demanding as much as four times the amount that its roaming partner would receive. As long as the larger carriers continue to stall the efforts of rural and small regional carriers to obtain data roaming agreements, the competitive status of these smaller carriers will be at risk. RCA urges the FCC to implement its recommendation in the National Broadband

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[14] *Notice* at 6.

[15] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 10-59, ¶ 67 (Apr. 21, 2010).

[16] *Fourteenth Report*, ¶ 4.

[17] *Id.*

Plan to expedite action on data roaming to promote entry and competition.[18] To further competition, the FCC also should consider imposing reciprocal compensation obligations on carriers when negotiating data roaming agreements.

III. Free the 700

The current 700 MHz band plan is anti-competitive. To maximize the value of the 700 MHz spectrum and increase competition throughout the 700 MHz band, the FCC must ensure that devices utilizing the paired blocks are capable of operating on all 700 MHz paired spectrum.[19] The Commission should intervene to free the 700 MHz spectrum. Interoperability will facilitate seamless roaming across all technologically compatible networks, greatly increase capacity when needed in an emergency, and provide economies of scale necessary to drive down equipment and handset costs, while increasing innovation and availability for both consumers and public safety.

To answer one of the FCC's questions in the *Notice*,[20] RCA carrier members are ready and anxious to utilize the 700 MHz spectrum band to deploy LTE. But to answer another one of the FCC's questions,[21] RCA carrier members do not currently have access to cost-effective 700 MHz band equipment. Even worse, small and regional carriers may never have access to equipment in the 700 MHz spectrum because AT&T and Verizon Wireless are attempting to adopt restrictive device practices.[22] Verizon Wireless and AT&T's market power enables them to drive 700 MHz equipment development and preclude near-term, mass production of handsets usable in the Lower A Block. This further harms the ability of smaller rural and regional carriers with 700 MHz A Block licenses

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[18] Broadband Plan at xii.

[19] Doug Hyslop & Chris Helzer, *Wireless Strategy 700 MHz Upper Band Analysis* (July 19, 2010), *available in* Coalition for 4G in America, Written Ex Parte Presentation, WT Docket No. 06-150; PS Docket No. 06-229; GN Docket No. 09-51 (May 10, 2010).

[20] *Notice* at 7.

[21] *Id.*

[22] AT&T devices may only work on the lower B and C Blocks, which are predominantly held by AT&T, and Verizon Wireless devices may only work on the Verizon Wireless' upper C Block.

from building out broadband and other services in the A Block.[23] Such restrictive practices create barriers to entry, undermine competition, reduce consumer choice, slow the build out of broadband in rural areas, prevent roaming in the 700 MHz band, strand customers with devices that work on a single carrier's network, and reduce the value of the 700 MHz A Block and other 700 MHz spectrum not held by AT&T and Verizon Wireless.[24]

In addition to access to interoperable devices, rural and regional carriers also need near-term access to more, ready to use, spectrum, particularly under 1 GHz. In the FCC's most recent 700 MHz auction, AT&T and Verizon Wireless won approximately 85% of the value of the paired spectrum. Smaller carriers were only able to win small regions in the Lower A block and Cellular Market Areas in the Lower B block.[25] For RCA members to compete, the FCC must auction in the near-term more spectrum in small geographic license areas.

IV. Mobile Wireless Technology is the Key to Ubiquitous Broadband Deployment in Rural America

In its *Notice*, the FCC asks how extensively providers have deployed advanced technologies in rural areas.[26] RCA members have been working for years to provide the fastest, most cost-efficient, advanced technologies in rural America.[27] As evidenced throughout these comments, though, these deployments have involved overcoming significant challenges and, in some cases, with help from government assistance.[28] Universal service support, for example, has helped RCA members construct towers, deploy infrastructure and provide service to double or triple their current

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[23] *See* 700 MHz Block A Good Faith Purchasers Alliance's Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, RM-11592 (filed Sept. 29, 2009); *see also, Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices*, Public Notice, RM-11592, DA 10-278 (Feb. 18, 2010).

[24] *Notice* at 6, 7, 8, 14, 15, 16, and 19.

[25] Interestingly, RCA members paid more price/MHz-pop than Verizon paid for the C block.

[26] See *Notice* at 7.

[27] RCA carrier member Viaero Wireless is currently conducting an HSPA+ trial in three locations, providing access to free high-speed broadband for 50 public and private users. Utilizing green technology, Viaero Wireless also constructed three wireless towers powered exclusively by solar power.

[28] *See, e.g.*, USDA RURAL DEVELOPMENT, BRINGING BROADBAND TO RURAL AMERICA 7 (2007), http://www.rurdev.usda.gov/rd/pubs/RDBroadbandRpt.pdf.

service areas.[29] Also, RCA members could significantly benefit from grants and loans from the Broadband Initiatives Program (BIP) managed by the Department of Agriculture's Rural Utilities Service (RUS),[30] much as they have benefited from the Broadband Loan Program administered by the same agency.[31]

A much greater percentage of rural Americans lack access to high-speed broadband at home than their urban counterparts.[32] In fact, the recently released Section 706 report revealed that an estimated 14 to 24 million Americans, most who live in rural America, still lack access to broadband.[33] The widely-disbursed, low population densities in rural America make deployments costly, and the investment return is not currently sufficient to encourage private investment in these parts of the country. The American Recovery and Reinvestment Act of 2009, in particular, could have provided an excellent opportunity to fund rural broadband deployment, with $7.2 billion in funding for broadband infrastructure.[34] As the FCC[35] and Congress[36] have recognized, wireless

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[29] *See* Greg Avery, *Qwest Would Lose Big Under Prop 101 Rules*, DEN. BUS. J., June 11, 2010, *available at* http://denver.bizjournals.com/denver/stories/2010/06/14/story5.html.

[30] See RURAL UTILITIES SERVICE, ROUND TWO APPLICATION DIRECTORY 15, 42. 127, 128, 253, 256, 406, 810 (2010), *available at* http://broadbandusa.gov/BIPportal/app_directory.htm.

[31] *See, e.g.*, Telecompetitor, *Stelera Wireless Gains $35 million in RUS Broadband Loan* (Mar. 19, 2008), http://www.telecompetitor.com/stelera-wireless-gains-35-million-in-rus-broadband-loan/.

[32] The Pew Study depicts that 57% of urban residents have access to high-speed broadband connections at home, while only 38% of rural residents have access to broadband at home.

[33] See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future*, GN Docket Nos. 09-137 & 09-51, Sixth Broadband Deployment Report, ¶28, FCC 10-129 (July 20, 2010).

[34] The American Recovery and Reinvestment Act of 2009, H.R. 1, 111th Cong. (2009).

[35] OBI Technical Report; *see also, Notice* at 18; *see also,* Acting Chairman Michael J. Copps, Federal Communications Commission, Bringing Broadband to Rural America: Report on a Rural Broadband Strategy 62 (May 22, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf. (Because wireless infrastructure costs are frequently less significant than comparable wired broadband deployments, wireless broadband can be an efficient means of delivering both backhaul and "last-mile" access services in rural areas. It can also enable mobility or portability. Consequently, wireless broadband service can offer cost-effective connectivity where no broadband exists, as well as complementary or competitive service where it does.); see also, Federal Communications Commission, Fourth Report to Congress, "Availability of Advanced Telecommunications Capability in the United States," at 9, GN Docket No. 04-54, FCC 04-208, September 9, 2004, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-208A1.pdf. (Wireless can bring broadband to remote areas where wireline deployment may be too costly. Rural citizens therefore stand to benefit from wireless access to broadband in unserved or underserved areas, and also because having multiple advanced networks promotes competition in price, features, and quality-of-service among broadband-access providers.).

[36] *See* J. Exp. Stat. at 149; Food, Conservation and Energy Act of 2008, Pub. L 110-246,122 Stat. 1651 (2008); *see also,* Food, Conservation, and Energy Act of 2008, Conf. Rep. No. 110-627, at 834 (2008). The Secretary of Agriculture is

broadband plays an increasingly significant role in providing cost-efficient broadband to rural America. Chairman Genachowski said that the United States must commit to a path to lead the world in mobile broadband.[37] The Chairman added,"[i]t is growing clearer every day that *broadband is the future of mobile and mobile is the future of broadband.* We need to capture that future and its benefits here in the United States."[38]

Despite the promise of the broadband stimulus program to end the digital divide, RUS so far has failed to heed the FCC's and Congress's proclamations espousing the virtues of mobile wireless broadband. In BIP's Round 1, RUS awarded only 23 terrestrial fixed wireless projects and five terrestrial mobile wireless projects, but awarded 67 wireline projects, 48 of which relied upon the most expensive form of deployment--fiber to the premises.[39] RCA is disappointed that RUS has chosen to try to bridge the digital divide with the most expensive technological option available and that it did not follow the advice of the FCC on how to create competition in rural America.[40] Competition would be better served by a more balanced RUS program, one that funds both wireline

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expected to be mindful that mobile broadband technologies are applicable to farmers, ranchers, and small rural business owners; *see also,* Linda K. Moore, Congressional Research Service, *Wireless Technology and Spectrum Demand: Advanced Wireless Services* CRS-5 (CRS Report. No. RS20993, Jan. 20, 2006), *available at* http://www.au.af.mil/au/awc/awcgate/crs/rs20993.pdf. (Wireless broadband costs less than wireline, but also has a wider geographic reach, thereby broadening the size of potential markets for broadband.); *see also,* Linda K. Moore, Congressional Research Service, *Spectrum Policy in the Age of Broadband: Issues for Congress*, (CRS Report No. R40674, July 13, 2009), *available at* http://assets.opencrs.com/rpts/R40674_20090713.pdf. (Wireless broadband also solves many of the middle mile issues problems identified by federal agencies, as microwave links between wireless access points often provide a more cost-effective substitute for fiber.)

[37] Genachowski, Julius, "Broadband: Our Enduring Engine for Prosperity and Opportunity." [*emphasis* added]. Prepared remarks for NARUC Conference, February 16, 2010, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296262A1.pdf.

[38] *Id.*

[39] *See* Connecting Rural America: United State Department of Agriculture, Broadband Initiatives Program, Round 1 Report at 6 (June 7, 2010), *available at* http://www.usda.gov/documents/RBB_report_v16.pdf.

[40] Using wireless technologies, the FCC estimates that ubiquitous broadband would cost $18.3 billion, whereas additional DSL deployments at comparable speeds would cost around $26.2 billion. *See* The Broadband Availability Gap: OBI Technical Paper No. 1 at 45 (April 2010). Another survey found that connecting 90% of unserved households with fiber-optic internet connections at a cost of $142 billion. Vince Vittore, Ubiquitous U.S. Broadband Will Cost At Least Triple the Current Stimulus Package, Yankee Group, *available at* http://www.yankeegroup.com/ResearchDocument.do?id=52108.

and wireless technology in keeping with the "technological neutrality" mandate imposed on RUS by the 2008 Farm Bill.[41]

Despite RUS's recent funding approach, RCA members hope to find other ways to fund the expansion of advanced broadband networks and technologies in rural areas, regardless of the challenges to do so.[42] To increase competition in rural America, the FCC and the administration should continue to support mobile broadband technologies by providing build out support in rural and remote regions of the nation.

V. Conclusion

RCA is committed to working with the Commission to encourage mobile broadband providers to construct and build networks, and promote entry and competition. The Commission can stimulate competition by eliminating handset exclusivity, mandating automatic roaming, ensuring interoperability throughout the 700 MHz spectrum band, and providing greater access to spectrum in smaller geographic license areas.

Respectfully submitted,

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[41] 7 U.S.C. 950bb (f) (For purposes of determining whether to make a loan or loan guarantee for a project under this section, the Secretary shall use criteria that are technologically neutral.).
[42] For example, USF does not currently support broadband in addition to voice.